

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT FRANCIS, II,

Plaintiff,

vs.

Case No. 07-CV-14921
HON. GEORGE CARAM STEEH

AT&T INC., d/b/a AT&T, and
AT&T MOBILITY, LLC f/k/a
CINGULAR WIRELESS,

Defendants.

ORDER DISMISSING WITHOUT PREJUDICE
PLAINTIFF'S MOTION TO DECLARE CLASS ACTION WAIVER UNLAWFUL (#13),
DISMISSING WITHOUT PREJUDICE
DEFENDANT'S MOTION TO COMPEL ARBITRATION (#17), AND
MODIFYING PROPOSED STIPULATED ORDER

On March 19, 2008, the parties submitted a proposed "Stipulated Order Setting Discovery and Briefing Schedule" relative to plaintiff Robert Francis II's January 16, 2008 motion to declare class action waiver unlawful, and defendant AT&T Mobility's¹ (AT&T) January 25, 2008 motion to compel arbitration and dismiss this action. AT&T filed its response to Francis' motion on January 31, 2008 (#22). The court entered a stipulated order on February 13, 2008 permitting Francis' response to AT&T's motion to be filed by March 18, 2008, the replies to be filed by April 7, 2008, and scheduling a hearing on the motions for May 1, 2008.

The proposed March 19, 2008 "Stipulated Order Setting Discovery and Briefing Schedule" contains nine numbered paragraphs. Five of the paragraphs, numbered (2), (3), (4), (5), and (7), pertain to discovery relative to Francis' motion to declare class action waiver unlawful, and AT&T's motion to compel arbitration and dismiss this action. As a

¹ Defendant AT&T Inc. was dismissed without prejudice by stipulation on February 2, 2008 (#25).

result of the requested discovery period, four of the paragraphs, numbered (1), (6), (8) and (9) propose a new briefing schedule with respect to the competing motions, and a new hearing date for the motions of on or after August 28, 2008.

Given the long period of discovery agreed upon by Counsel, through July 31, 2008, as well as the interplay between the results of discovery and the merits of the parties' pending motions, the court finds that Francis' motion to declare class action waiver unlawful, and AT&T's motion to compel arbitration and dismiss this action, should be denied without prejudice as unripe for decision, and shall be considered by the court as re-filed on July 31, 2008 upon the expiration of the stipulated discovery schedule set forth in the March 19, 2008 "Stipulated Order Setting Discovery and Briefing Schedule." Accordingly,

The March 19, 2008 "Stipulated Order Setting Discovery and Briefing Schedule" is entered as MODIFIED, under separate Order, striking paragraph numbers (1), (6), (8), and (9). Plaintiff Francis' motion to declare class action waiver unlawful, and AT&T's motion to compel arbitration and dismiss this action, are hereby DENIED WITHOUT PREJUDICE, and SHALL BE CONSIDERED RE-FILED on July 31, 2008. The time for filing response and reply briefs to the re-filed July 31, 2008 motions shall be governed by E.D. Mich LR 7.1(d). If required, a new hearing date will be scheduled after July 31, 2008.

SO ORDERED.

Dated: March 20, 2008

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
March 20, 2008, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk